

# **MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS**

**FOR JUNE 6, 2007**

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **June 6, 2007** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive Paul Babb.

## **ROLL CALL**

12 present and 0 absent

## **PRAYER**

Commissioner Fay led the commissioners in prayer.

## **APPROVAL OF THE MINUTES OF THE MAY 16, 2007 REGULAR MEETING**

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Minutes of the May 16, 2007 Regular Meeting.

## **ITEMS NOT ON THE AGENDA – SUSPENSION OF THE RULES**

**It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 12 yeas and 0 nays that in accordance with provisions of Section 6 of Rule VI of the Rules of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the council hereby finds that an emergency condition exists which requires that the Council Rules be suspended to allow Council Communication No. 07-408 to be added to the agenda of tonight's Regular Meeting of the Council**

## **PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA**

None

## **CHIEF EXECUTIVE'S REPORT**

Chief Executive Babb told the Council that another Council member is needed for the Project Assistant Grant Program to sit on that Committee tomorrow at 3:30

PM in the Chief Executive's office. He asked if anybody was interested in that to please let him know.

He also invited everybody to the celebration between Butte and Anaconda on the 15<sup>th</sup> of the month on our National Historic District Landmark District. He has the schedule of events in his office.

General Electric is looking to locate part of their operations somewhere in Montana. He said they have been working with Senator Baucus's office to find out how we can get a proposal in for that. The person that is looking into that did attend our Summit so he has been already introduced to Butte and the leadership of Butte. We are hopeful we might be able to get on the short list for that.

A few Commissioners went on that tour of Patriot Rail a couple of weeks ago. They are the ones who have taken over Rarus Railway. They have quite an operation that they have planned for our area, not only from a rail standpoint but also from economic development.

## **SECTION I**

### **PUBLIC HEARING**

FOR THE PURPOSE TO SOLICIT COMMENTS REGARDING AN AMENDMENT TO THE FY 06-07 BUTTE-SILVER BOW BUDGET FOR UNANTICIPATED REVENUE FOR CENTRAL EQUIPMENT MAINTENANCE BUDGET. (Communication No. 07-339 being held in Committee of the Whole) **Proof of publication was noted and placed on file.**

Jeff Amerman, Director of Finance and Budget Department, told the council that this is to amend the budget for increased fuel costs. The Central Equipment Maintenance is our repository for the fuel. After we had increased all of the departments we had not increased the CEM budget so they need budget authority simply to fill the tanks.

Chief Executive Babb opened the public hearing at 7:36 PM and called for any proponents. On the third and final call there being none he called for any opponents. Again there was not response so he close the public hearing at 7:37 PM.

## **SECTION II**

### **PUBLIC HEARING**

FOR THE PURPOSE TO SOLICIT COMMENTS REGARDING AN AMENDMENT TO THE FY 06-07 BUTTE-SILVER BOW BUDGET FOR UNANTICIPATED REVENUE FOR GENERAL FUND PARKS BUDGET. (Communication No. 07-340 being held in Committee of the Whole) **Proof of publication was noted and placed on file.**

Jeff Amerman, Director of Finance and Budget Department, told the Council that this is just an accounting housekeeping issue. The road department paved the parking lot. We don't have any parking lots in the road department. They are all in parks so all this is to take the numbers from the road budget and put them in the park budget. We need to have the budgetary authority to do that.

Chief Executive opened the public hearing at 7:38 PM and called for any proponents. On the third and final call there being none, he called for opponents. Again there was no response, so he called the public hearing closed at 7:39 PM.

### **SECTION III**

### **PRESENTATION COMMUNICATION NO. 07-356**

Karen Byrnes, Director Community Development Department, requesting time on 6/6/07 agenda for presentations of redevelopment proposals for the Kelley Warehouse.

Karen Byrnes, Community Development Director, told the council that they have received three proposals for the Kelley Warehouse. On June 13<sup>th</sup> they will hold a public hearing to allow for public comment. She called their attention to the memo's handed out to their desks that summarizes these proposals. After the public hearing is held there will be a review committee to review and score them to certain criteria. The members of this Committee are Russ Connole, Economic Development Office, Steve Hess, Planning Department, Rick Larson, Health Department, Rob Macioroski, Land Records Department, Mark Reavis, Health Department and Commissioner Cindi Shaw, District 11. She encouraged anyone else who is interested to participate. They hope to have a recommendation for Council to consider at the June 20, 2007 meeting.

#### First Proposal – Omega New World Technology

Jim Ewing, 855 Lewisohn, Butte, Montana gave the presentation of the proposal. He told the commissioners that Omega New World Technology is located in Victorville, California. They have proposed three separate projects that could be used in this building. Their proposal is for the manufacturing and distribution of (1) Electrical Power Systems, (2) Battery recovery program and (3) Air filter recovery program. The majority of these products will be going into federal government facilities, primarily the military bases.

#### Second Proposal Ueland Family, LP

Ron Ueland, 122181 Browns Gulch showed a power point presentation. This will be light manufacturing, packaging and distribution for the following businesses – Intercontinental Truck Body, SeaCast, and WestBred. They have committed to 25-30 jobs for this facility and over a million dollars in improvements.

Third Proposal – Masters Group North America, Inc.

Brian McNamara, Chief Financial Officer of 7540 Nine Mile Road, Rockford, Michigan and Chad Shepler, Head of U. S. Operations of 201 Lovacka Street, Austin, Texas showed a power point presentation. They are a distribution and inventory Storage company and also Office Space and Exterior Renovations. They passed around some of their office products and handouts. They explained they are a global supplier of branded and private label office products. They expect sales this year to be about 33-35 million. We are working to acquire a company in the hobby and craft industry. Their first order from Office Depot for staplers was over a million dollars.

**SECTION IV**

**PRESENTATION  
COMMUNICATION NO. 07-373**

Rob Dollar, President/GM, requesting time on the 6/6/07 agenda to make a presentation on the Toyota of Butte proposal for Butte, Montana and requesting a tax abatement.

Rob Dollar, President, 451 Saddlehorn Drive showed a power point presentation of the future Toyota Facility on the South end of Harrison. He showed slides of what the new building would look like. Russ Connole recommended this communication be referred to the Tax Abatement Review Committee and schedule a public hearing be scheduled for June 20<sup>th</sup>, 2007 and that the Tax Abatement Review Committee meet the week of June 24<sup>th</sup> and come back to Council on July 2 with a recommendation.

**It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by unanimous verbal vote to refer the proposal to the Tax Abatement Review Committee, that a public hearing be scheduled for 6/20/07 and place Communication 07-373 on file.**

**Chief Executive Babb then moved back to Section III for a recommendation on Communication No. 07-356. It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to refer the three proposal be referred to the Developers’ Packet Review Committee for a report back and Communication No. 07-356 be placed on file.**

Russ Connole said regarding Communication No. 07-373, in the past the Council Chairman was a part of the Tax Abatement Review Committee as well as the Commissioner from the district. In this case Commissioner O’Leary is the commissioner in that district so he asks that another commissioner also be a part of that committee. Commissioner Granger volunteered and the council approved.

Chief Executive Babb then called for a five-minute recess at 8:45. The Council reconvened at 8:55PM with a roll call vote of 12 present and 0 absent.

## SECTION V

### PRESENTATION COMMUNICATION NO. 09-397

David G. Gates, Vice President Northwestern Energy, requesting time on the 6/13/07 agenda to make a presentation on proposed Mountain States Transmission Intertie Project. **Hold this presentation for Committee of the Whole 6/13/07**

## SECTION VI

### CONSENT AGENDA

- A. 1. COMMITTEE OF THE WHOLE MEETING REPORT
- 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
- 3. JUDICIARY COMMITTEE MEETING REPORT
- 4. PUBLIC WORKS COMMITTEE MEETING REPORT

### B. PETITIONS

- 1. 07-6 John Harrington, Building Official, requesting on behalf of Three Dog Holdings, Inc. to close and vacate a portion of Meadowlark Lane in SE ¼ of section 32, T3N, R7W. **Recommendation: refer to Public Works Committee.**
- 2. 07-7 John Harrington, Building Official, requesting on behalf of Joe J. Shoemaker, to close and vacate a portion of an alley adjacent to Blocks 5 and 12 in the Kemper Addition. **Recommendation: refer to Public Works Committee.**

### C. COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any segregations. Commissioner O'Leary segregated Section I of the Finance and Budget Committee Report, Communication No. 07-142. He also segregated No. 39 on page 7, Communication No. 07-388 and he made "friendly amendments" to No. 42 and No. 47 that Diane Giop is from the library rather than the Health Department. Commissioner Lee made a "friendly amendment" to the Committee of the Whole Meeting Report, Communication 07-320. The recommendation should read "Approve request and place on file." Commissioner Foley segregated No. 38, Communication No. 07-387.

**It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Consent Agenda,**

Section A, 1 through 4, Section B, 1 and 2 and Section C, Items 1 though 57 exclusive of No. 38 and 39

### **SEGREGATIONS**

Under Finance and Budget Committee Report, Section I, Communication No. 07-142. Commissioner O'Leary wanted discussion tonight and try to come up with a compromise agreement between us and BLDC. Commissioner Sorich asked Jeff Amerman, Director of Finance and Budget, to give the council a little history on this. Mr. Amerman said this was a loan that was for the Sato Project, the Sears Building back in 2001. The paperwork was never completed, no approval by council for the loan and after 911 when the money had already been appropriated and spent, Sato pulled out. We have been going back and forth between BSB and BLDC with various offers of settlement, none of which have ever come to fruition. The original agreements were for \$73,500.00 each party to expend those. The other issue is whether or not BSB would be found in default on this loan if we do not pay it off in its entirety. Commissioner Sorich asked County Attorney Bob McCarthy can we legally negotiate with the BLDC on this matter. He replied he thinks we can compromise a disputed amount. Commissioner Shaw asked Jim Smitham what he thought a compromise might be. He replied that he thought a 50-50 split would be fair. He said his board had already voted on a 50-50 split with BSB. Andy Zdinak, Marketing Director, passed around a handout with a breakdown, showing what they have paid out. They were awarded a \$750,000 loan on July 26, 2001. The IRP loan to BSB represented 20%. For the first three years, they had to pay 1% interest annually, which is \$1,500. After the third year they went into their full debt service which is the principal and interest. We do have a payment coming up in July. That amount is \$6,367.00. We usually pay these amounts out of what we get back on the repayment of the loan. Since we did not get any repayment on the loan, we are out on our own.

It was moved by Commissioner O'Leary, seconded by Commissioner Sorich and passed with a unanimous verbal vote that we repay that amount pending a review by our Budget Office to verify the math and place Communication No. 07-142 on file. On the question Commissioner Mulcahy asked Mr. Amerman how much money did BSB lose in this endeavor. Mr. Amerman said aside from the \$150,000 and less the amount of the HVAC equipment that was moved over to the Mother Load, we are going to be writing off \$543,000. Commissioner Coleman offered a substitute motion that we refer this to Finance and Budget to review the dollars and cents and report back at the next full council. The motion was seconded by Commissioner Moodry. On the question, Commissioner O'Leary said that motion is fine by me but it would come back in Committee of the Whole next week. The motion carried with a unanimous verbal vote.

**Communication No. 07-388**

Commissioner O’Leary said the original recommendation was “to concur and place on file”. It appears we will have to have a public hearing in order to get this money in position to actually spend. He called on Jeff Amerman, Finance and Budget Director. Mr. Amerman passed out a handout showing the fiscal impact. Many of these reclassifications had been requested last fiscal year and in some instances even in 05-06. Per the terms of the contract they have to be retroactive to the date that they originally requested a reclassification. The fund impact for this year shows there is no way that the individual budgets can sustain that with the budget authority available this year. The only way we can proceed forward is to have a public hearing scheduled for the 20<sup>th</sup> of June and then introduce a resolution on the 27<sup>th</sup> that will increase budget authority which will have to come from reserves. He recommends that council approves a public hearing for the 20<sup>th</sup> and introduced the budget amendment resolution on the 27<sup>th</sup> at the Special Meeting that has already been called for that time. We would be able to do that under suspension of rules and increase the budget at that time.

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to schedule a public hearing for June 20, 2007 and request the County Attorney draw up a budget amendment resolution for action on the 27<sup>th</sup> at the Special Meeting.

**Communication No. 07-387**

Commissioner Foley asks to sustain from voting on this issue since he is an employee under that program

It was moved by Commissioner O’Leary, seconded by Commissioner and carried with a unanimous verbal vote to concur with the request in Communication No. 07-387 and place communication on file

**EMERGENCY** – Communication No. 07-408 – Toby Day, Extension Agent, requesting approval of line item budget transfer.

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to concur with the request in Communication No. 07-408 and place on file.

## **SECTION VII            COMMUNICATIONS TO BE READ AND ACTED UPON**

1. 07-348      William Kirschke, requesting permission to utilize right-of-way at Park and Main for a brief period 6/9/07.

County Attorney McCarthy said the setting of chairs and a table creates an exposure to liability. He questions whether he has an insurance. He could just stand and hand things out. As long as he does not set up table and chairs, he can hand out brochures.

**It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to deny the request for table and Chairs and advise him that he would be within his rights to stand there and hand things out.**

2. 07-361      Ed Randall, Community Enrichment Coordinator, requesting time on the 6/6/07 agenda to ask for approval to abate 717 W. Broadway owned by Heather Holland (Rowe).

Ed Randall, Community Enrichment Coordinator, and told the commissioners that several weeks ago they began receiving calls about 717 W. Broadway. This was a home that burned down in June of 06. The owners are in a legal issue with the insurer. They received \$400.00 from the insurance company to abate the property. It was not enough. They have since moved to Belgrade, Montana. The owner has no money nor plans to abate. We would like to finish the cleanup using Community Enrichment Funds. We could lien the property if that’s what the council wishes to do.

**It was moved by Commissioner Coleman, seconded by Commissioner Frasz and carried by a unanimous verbal vote that we approve Mr. Randall’s communication with the provision that the money spent be attached as a lien on the property**

3. 07-372      LeRoy Cotton, Chairman Historic Preservation Commission, requesting return of Civil War Memorial Cannon to Butte.

**It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to concur with the recommendation in Communication No. 07-372 and place on file.**

4. 07-377      Paul Babb, Chief Executive, requesting concurrence in approval of grant award of \$86,380.00 to Fortune Developers LLC.

Jay Fortune of Fortune Developers LLC gave a power point presentation of his



**It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the request in Communication No. 07-377 and place on file.**

**1. COUNCIL RESOLUTION NO. 07-38**

**2. COUNCIL RESOLUTION NO. 07-39**

### 3. COUNCIL RESOLUTION NO. 07-40

**4. COUNCIL RESOLUTION NO. 07-41**

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COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**5. COUNCIL RESOLUTION NO. 07-42**

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE WOODARDS MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**6. COUNCIL RESOLUTION NO. 07-43**

A RESOLUTION TO DESIGNATE A SINGLE POINT OF CONTACT TO SERVE AS THE PRINCIPLE COORDINATOR FOR THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) IMPLEMENTATION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**SECTION IX ORDINANCES AND RESOLUTIONS –  
SECOND READING**

**1. COUNCIL BILL NO. 07-7  
ORDINANCE NO. 07-7**

AN ORDINANCE AMENDING CHAPTER 2.20 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “LAW ENFORCEMENT DEPARTMENT”; AMENDING 2.20.085, BSB MC ENTITLED “FEES OF SHERIFF”; ADDING A BAIL BOND FEE CHARGED BY THE SHERIFF AND PROVIDING FOR THE DEPOSIT OF SUCH AN INCREASE INTO THE LAW ENFORCEMENT PATROL VEHICLE REPLACEMENT AND EQUIPMENT FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a roll call vote of 12 yeas and 0 nays to place Council Bill No. 07-7, Ordinance No. 07-7 on second reading and passed having been deemed fully read at length.**

**SECTION X ORDINANCES AND RESOLUTIONS –  
FINAL READING**

**1. COUNCIL RESOLUTION NO. 07-30**

A RESOLUTION URGING THE CESSATION OF WAR AND COMBAT OPERATIONS IN IRAQ; FOR THE RETURN OF AMERICAN TROOPS; FOR FULL FUNDING OF VETERANS' PROGRAMS TO MEET THE NEEDS OF AMERICA'S VETERANS, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 8 yeas and 4 nays to place Council Resolution No. 07-30 on final reading and passed having been deemed fully read at length. Voting Nay were Commissioners Granger, Sorich, Frasz and Shaw.**

**2. COUNCIL RESOLUTION NO. 07-35**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW CIVIC CENTER FROM THE BUTTE-SILVER BOW CIVIC CENTER CONCESSIONS TO BE USED FOR LABOR AND PRODUCTS TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call of 12 yeas and 0 nays to place Council Resolution No. 07-35 on final reading and passed having been deemed fully read at length.**

**3. COUNCIL RESOLUTION NO. 07-36**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW FIRE DEPARTMENT FROM THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE BOULEVARD VOLUNTEER FIRE DEPARTMENT SOCIAL FUND TO BE UTILIZED FOR EQUIPMENT FOR THE FIRE DEPARTMENT TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and**

**SECTION XI                                ORDINANCES AND RESOLUTIONS –  
SUSPENSION OF THE RULES FOR FINAL PASSAGE**

**1. COUNCIL RESOLUTION NO. 07-37**

## ADJOURN

The meeting adjourned at 10:15 PM

## CHIEF EXECUTIVE

**ATTEST:**

CLERK AND RECORDER

